

Decision 02-03-038 March 21, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Utility Consumers' Action Network,

Complainant,

vs.

Pacific Bell (U 1001 C),

Defendant.

Case 98-04-004
(Filed April 6, 1998)

Case 98-06-003
(Filed June 1, 1998)

Case 98-06-027
(Filed June 8, 1998)

Case 98-06-049
(Filed June 24, 1998)

Investigation 90-02-047
(Filed February 23, 1990)

And Related Matters.

OPINION GRANTING COMPENSATION AWARD

This decision grants Utility Consumers' Action Network (UCAN) an award of \$132,493.40 in compensation for its contribution to Decision (D.) 01-09-058.

1. Background

On April 6, 1998, UCAN filed a complaint alleging that Pacific Bell was:

- persuading customers to switch from complete Caller ID blocking to selective blocking by providing incomplete and misleading information about the service and the level of privacy protection it provided,
- marketing packages of services under the name “The Basics” and the “Basics Plus” which suggest that the services are basic telephone service rather than a package of optional features,
- offering the most expensive inside wire repair service first and only telling customers of a lower-priced option if they reject the first,
- unlawfully using and disclosing customer proprietary network information, and
- employing sales programs and practices which operated to the detriment of customer service and quality customer information.

In D.01-09-058 we addressed the issues raised in UCAN’s complaint regarding Pacific Bell’s techniques for marketing its optional services to residential customers. We found that some of those techniques violated statutory and decisional standards and that some did not. We found that Pacific Bell failed to sufficiently inform customers regarding the number blocking options to prevent a caller’s number from being displayed on a Caller ID device. We also found that Pacific Bell’s marketing policy of sequentially offering packages of services in descending order of price fails to sufficiently inform customers because they are not told of the lesser priced package unless they refuse the more expensive option. We also held that Pacific Bell could not use the Universal Lifeline Telephone Service subsidy program as a link to market other optional services, and that “The Basics,” a package of optional services, inaccurately suggests a relationship with basic telephone service.

To remedy these violations, we ordered Pacific Bell to (1) notify customers who were affected by its violations and make any necessary corrections, (2) pay a \$25.55 million fine, and (3) revise Tariff Rule 12 to ensure that customer service requests are fulfilled prior to subjecting customers to marketing pitches.

Witnesses Presented by UCAN.

UCAN's Executive Director, Michael Shames, testified regarding the consumer impact of Pacific Bell's sales and marketing plans. UCAN witnesses Charles Carbone and Danial Saban testified about contacts with Pacific Bell's customer service representatives. UCAN's witnesses Patricia Greenan and Janet Spector provided their observations from their jobs as Pacific Bell employees. UCAN's final witness was Beth Givens, Founder and Director of the Privacy Rights Clearinghouse.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Public Utilities Code Sections 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of compensation and may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the Commission in the making of its order or

decision because the order or decision has adopted in whole or in part on one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. NOI to Claim Compensation

UCAN timely filed its NOI and was found to be eligible for compensation in this proceeding by a ruling dated March 8, 1999, which also found that UCAN had demonstrated significant financial hardship.

4. Contributions to Resolution of Issues

UCAN provided a detailed analysis of its contribution to the factual findings and legal conclusions in D.01-09-058. For example, on the issue of Caller ID, UCAN noted that the decision relied on documents UCAN provided as part of its direct testimony. Similarly, when considering the issue of marketing to ULTS customers, the Commission relied extensively on evidence presented by UCAN. UCAN substantially contributed to the resolution of the issues in this proceeding.

5. The Reasonableness of Requested Compensation

5.1. Expert Witness

The Commission's standard method for compensating expert witnesses is to set an hourly fee and simply multiply the hours recorded by the expert by the hourly rate. UCAN seeks compensation for Beth Givens, its expert witness on privacy matters, of \$12,150.00, which reflects an hourly rate of \$150. Givens testified to the impact on customers' privacy of Pacific Bell's misleading descriptions of selective Caller ID blocking. Givens is a nationally known expert on privacy issues. The Commission has set the hourly fee for comparable experts at \$150 per hour, see, e.g., D.00-10-014 (JBS Energy). Givens' rate and compensation are reasonable.

5.2. Attorneys' Fees

UCAN requested compensation for two attorneys: Michael Shames and Charles Carbone. The total hours worked and requested hourly rates for each attorney:

Shames	325.1 (hours)	x	\$195/hour	= \$63,394.50
Carbone	563.2(hours)	x	\$90/hour	= \$50,688.00
TOTAL				=\$114,082.50

UCAN documented the claimed hours by presenting a daily breakdown of hours for each attorney with a brief description of each activity. The hourly breakdown presented by UCAN reasonably supports its claim for total hours.

The attorney's hourly rates requested by UCAN have been previously approved by the Commission and reflect no increase since 1998. UCAN does not explain its decision not to seek increases. We do not second-guess this decision, but only note that the Commission's usual practice is to entertain periodic requests to ensure that intervenors' counsel are compensated at the required market rate. The rates are reasonable and will be approved.

5.3. Other Costs

UCAN requested \$6,260.90 for other costs (e.g., travel, telecommunication, mailing costs). UCAN provided an itemized description of each expense with the date on which it was incurred as well as the purpose of the expense. Each of these is reasonable and will be approved.

6. Award

We award UCAN:

Attorneys' Fees	\$ 114,082.50
Expert Fees	\$ 12,150.00
Misc Costs	<u>\$ 6,260.90</u>
TOTAL	\$ 132,493.40

Pacific Bell is responsible for payment of this award.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after UCAN field their compensation request and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put UCAN on notice that the Commission staff may audit UCAN's records related to this award. Thus, UCAN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. UCAN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Pursuant to Public Utilities Code Section 311(g)(3) and Rule 77.7 (f)(6) of the Commission's Rules of Practice and Procedure, the 30-day comment period for draft decisions is waived because this is a decision on a request for compensation.

Findings of Fact

1. UCAN have made a timely request for compensation for its contribution to D. 01-09-058.
2. UCAN made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding in its NOI.
3. UCAN has contributed substantially to D. 01-09-058.
4. UCAN's expert witness Givens and attorneys Shames and Carbone requested rates that are no greater than the market rates for individuals with comparable training and experience.
5. UCAN supported its request for additional costs.

Conclusions of Law

1. UCAN has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.
2. UCAN should be awarded \$ 132,493.40 for its contribution to D. 01-09-058.
3. This order should be effective today so that UCAN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Consumers' Action Network (UCAN) is awarded \$132,493.40 for its contribution to D. 01-09-058.
2. Pacific Bell Telephone Company (Pacific Bell) shall pay the total of \$132,493.40 to UCAN as set out above within 30 days of the effective date of this order. Pacific Bell shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical

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Release G.13, with interest, beginning 75 days after November 9, 2001, and continuing until full payment is made.

This order is effective today.

Dated March 21, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners